

EMPLOYEE OR INDEPENDENT CONTRACTOR?

A brief look at the difference...



New Mexico Taxation and Revenue Department
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www.tax.newmexico.gov



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Tax help for New Mexico's employees and independent contractors

INTERNAL REVENUE SERVICE

The Internal Revenue Service (IRS) is the first judge of who is an employee and who is not. Contact the IRS online at www.irs.gov or telephone 1-800-829-1040.

NEW MEXICO TRD DISTRICT TAX OFFICES

New Mexico offers free tax help and advice at the TRD district tax offices:

1. District A (Santa Fe) (505) 827-0951
2. District B:
(Albuquerque) (505) 841-6200
(Farmington) (505) 325-5049
3. District C (Las Cruces) (575) 524-6225
4. District D (Roswell) (575) 624-6065

The Taxation and Revenue Department conducts free, three-hour workshops monthly around the state. Please check the web site at www.tax.newmexico.gov to find the calendar. Choose “workshop calendar” under “news and alerts.” You may also write to us at Tax Information and Policy Office, Post Office Box 630, Santa Fe, NM 87504-0630, and we will mail a copy to you.

Other agencies also have responsibility for employment-related questions:

New Mexico Department of Workforce Solutions handles State Unemployment Insurance, wage-and-hour issues and other employer-employee transactions at its Employment Security Division, (505) 841-8439 in Albuquerque. There are branch offices throughout New Mexico.

Regulation and Licensing Department oversees certain industries and professions that require licensing of practitioners. It has a number of branch offices around the state. Call (505) 827-7000 for general information.

Worker's Compensation Administration answers questions about employer compliance, insurance, self-insurance and related issues. There's a toll-free number at 800-255-7965, or call the main switchboard in Albuquerque at (505) 841-6000.

To find publications on the TRD web site: www.tax.newmexico.gov. Click on “forms and publications.”

Are you an employee or an independent contractor?

One source of confusion, miscommunication and bad feelings between those who require and pay for services in New Mexico and those who provide them is the issue of employee vs. independent contractor.

In this state a person who provides services on one job for a single business or organization is either an employee or an independent contractor, but not both.

New Mexico defers to the Internal Revenue Service's criteria for determining who is an employee and who is not, but there is an important factor in New Mexico that makes a big difference to the provider of services. *If the service provider is not an employee, the payment received for performing services in New Mexico is subject to the gross receipts tax.* There are very few exceptions. If an independent contractor bills a customer for its own employee's labor, the contractor owes gross receipts tax on the full amount billed to the customer, including the employee's labor and all reimbursed expenses. The employee's own wages, however, are exempt from gross receipts tax.

CRITERIA TO APPLY

The following conditions will help you decide whether you are an employee or independent contractor.

You are probably an employee if:

- Income tax is withheld from your paycheck;
- You are covered by Worker's Compensation;
- The business or organization that pays you also pays social security taxes and unemployment insurance on your behalf;
- The business or organization considers you an employee, and
- The business or organization has the right to exercise control over the means of accomplishing the result.

New Mexico presumes you are an employee if all the above conditions are present, but you may still be an employee if one or more conditions are absent.

You are probably an independent contractor if (among other criteria):

- You decide your own hours and schedule;
- You are responsible for your own costs connected to the service, for example, your own vehicle, supplies, equipment, home office, etc.;
- The business or organization gives you a federal form 1099 rather than a W-2, and
- You have full control over the means of accomplishing the result agreed upon by you and the

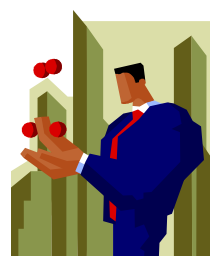
business or organization that is paying you.

WITHHOLDING TAX

If you are an employee who is a resident of New Mexico, every employer required to withhold from your paycheck for federal income tax purposes is required to withhold for New Mexico too. The employer reports and sends the state-withheld amount to the New Mexico Taxation and Revenue Department and gives you a W-2 form during the tax season so you can complete your state income tax return.

STATE UNEMPLOYMENT INSURANCE

State unemployment insurance and taxes are not administered by the Taxation and Revenue Department.



The New Mexico Department of Workforce Solutions (see “tax help for employees and independent contractors” in this brochure) is the office to consult about wage-and-hour problems, unemployment payments and other job security issues. Although most of its administrative functions are in Albuquerque, NMDWS has 25 offices and three special service offices in New Mexico.

WORKER'S COMPENSATION

The Worker's Compensation Administration, which handles problems of on-the-job injuries and related issues, is in Albuquerque but has four regional offices. The employer submits both the employer's and employee's portions of the quarterly worker's compensation administration fund assessment to the Taxation and Revenue Department. TRD then sends the money

to the Worker's Compensation Administration Fund. See “tax help for employees and independent contractors” in this publication.

GROSS RECEIPTS TAX

If you are not an employee, but you perform services in New Mexico for money or other consideration, you owe gross receipts tax on the payments you receive. You are in business for yourself. The gross receipts tax is a tax on the privilege of engaging in business in New Mexico, but you may recover the tax from your customer just like any other overhead expense. You remain liable for reporting and paying the tax. It is *your* tax, not your customer's tax.

GROSS RECEIPTS TAX AND INCOME TAX

Gross receipts tax is due on the gross amount — not net after your expenses — paid to you by your customers. You also owe personal income tax on income from New Mexico sources and may need to pay estimated income tax on it. These are separate tax programs. To report and pay income tax does not satisfy the requirement to report and pay gross receipts tax. New Mexico and the IRS cooperate in a tape match that compares Schedule C business income to New Mexico gross receipts tax reports. Filers explain differences to TRD.

Please see Brochure, “What Is Gross Receipts Tax?” ♦